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On behalf of the Washington State Medical Association, representing more than 12,500 physicians and physician assistants, as well as our undersigned physician partner organizations, thank you for the opportunity to provide comment on the request for information related to balance billing dispute resolution. Our organizations urge the Office of the Insurance Commissioner to maintain the arbitration system under the Balance Billing Protection Act until at least July 1, 2024.

As noted in the OIC's request for information, the implementation of the Independent Dispute Resolution system under the No Surprises Act has been subject to repeated successful legal challenges on the grounds of being inconsistent with the underlying law. Last week a federal judge again sided with the Texas Medical Association in invalidating portions of a final rule which itself was revised due to a prior successful legal challenge¹.

Subsequently CMS has paused use of the IDR system while federal regulators evaluate and update the IDR process to make it consistent with the latest TMA decision². And meanwhile other lawsuits against the IDR system are still pending. Its prudent for the state to maintain its arbitration system under the BBPA while the legal challenges play out and the federal law continues to coalesce.

The practical experience of the IDR system has faced its own challenges. Limitations on claims batching/bundling and inaccurate projections by federal regulators of the number of disputes that would be submitted through IDR have contributed to a backlog of tens of thousands of claims. Delays in the system mean that clinicians often must wait over 200 days for reimbursement, which does not include the additional mandatory 90-day cooling off period following a ruling.

By contrast to IDR, the BBPA arbitration system has been operating as intended, and in some circumstances has helped facilitate successful negotiations with carriers to return to network status. We do not have confidence that the IDR system as currently constituted will have the same effect.

¹ https://www.acr.org/-/media/ACR/Files/Advocacy/TMA-II-District-Court-Opinion_February-2023.pdf

² [Payment disputes between providers and health plans | CMS](#)

For these reasons we again urge the OIC to maintain the BBPA arbitration system through at least July 1, 2024. Thank you for your consideration and please let us know if there's additional information we can provide.

Sincerely,

Sean Graham
Director of Government Affairs
Washington State Medical Association

Washington Chapter – American College of Emergency Physicians
Washington State Radiological Society
Washington State Society of Anesthesiologists
Washington State Society of Pathologists
Emergency Department Practice Management Association
Anesthesia Associates, PS
Associated Emergency Physicians
Bellingham Anesthesia Associates, PS
Evergreen Emergency Services
Evergreen Eye Anesthesia, PLLC
Longview Anesthesiology Group, PC
Monroe Anesthesia, PLLC
Matrix Anesthesia, PS
Olympia Emergency Services
Olympic Anesthesia Services
Paceline Anesthesia, PLLC
Pacific Anesthesia, PC
Providence Health and Services – Washington (Providence Anesthesia Services)
Puget Sound Physicians
Rainier Anesthesia Associated, PC
RAYUS Radiology
Seattle Emergency Physician Services
Surgical Center Anesthesiologists
South Sound Anesthesia Associates, PLLC
TRA Medical Imaging
US Anesthesia Partners
Valley Anesthesia Associates, PLLC